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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION
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11 TYMR IBN ABDULLAH,) Case No. CV 16-00461-SJO (AS)
12)
13 Petitioner,) ORDER OF DISMISSAL
14)
15 v.) WITHOUT PREJUDICE
16)
17 SUPERIOR COURT RANCHO)
18 CUCAMONGA DISTRICT (RANCHO)
19 CUCAMONGA), WEST VALLEY)
20 DETENTION CENTER,)
21)
22 Respondents.)
23)
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25)
26)
27)
28)

19 INTRODUCTION
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21 On March 14, 2016, Petitioner filed a "Federal Petition for
22 Writ of Habeas Corpus ("Petition"), with an attached "Motion in
23 Arrest of Judgment" and a "Motion to Set Aside Information."
24 (Docket Entry No. 1).
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26 In a Minute Order issued on March 18, 2016, the Court
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1 determined that the Petition was deficient in the following
2 respects: (1) It was not clear whether Petitioner was attempting to
3 file a Petition for Writ of Habeas Corpus by a Person in Federal
4 Custody (pursuant to 28 U.S.C. § 2241), a Petition for Writ of
5 Habeas Corpus by a Person in State Custody (pursuant to 28 U.S.C.
6 § 2254), or some other pleading (i.e., a civil rights action
7 pursuant to 42 U.S.C. § 1983); (2) Petitioner had failed to name
8 the proper Respondent (the name of the officer having custody over
9 him); (3) Petitioner had failed to plainly state "[t]he statutory
10 or other basis for the exercise of jurisdiction by this Court," in
11 violation of Central District Local Rule 8-1 and Fed.R.Civ.P. Rule
12 8(a); (4) Assuming the pleading was a Petition for Writ of Habeas
13 Corpus by a Person in State Custody, Petitioner had failed to
14 specify any understandable ground for relief and did not include
15 any supporting facts, in violation of Rule 2(c), Rules Governing
16 Section 2254 Cases in the United States District Courts; and (5)
17 Petitioner had alleged vague and conclusory "claims," in violation
18 of Fed.R.Civ.P. Rule 8(a) and 8(d). The Court ordered Petitioner
19 to file a First Amended Petition for Writ of Habeas Corpus by a
20 Person in State Custody, pursuant to 28 U.S.C. § 2254, **or** a
21 Petition for Writ of Habeas Corpus by a Person in Federal Custody,
22 pursuant to 28 U.S.C. § 2241 on the proper Central District Form.
23 (Docket Entry No. 3).

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25 On April 7, 2016, Petitioner, a pre-trial detainee at the West
26 Valley Detention Center in Rancho Cucamonga, California, filed a
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1 First Amended Petition by a Person in State Custody, pursuant to 28
2 U.S.C. § 2254. (Docket Entry No. 4).

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4 The First Amended Petition appears to allege the following
5 grounds for federal habeas relief: (1) Petitioner was not advised
6 of his rights during the preliminary hearing, leading him to be
7 subject to the ineffective assistance of counsel; (2) The Deputy
8 District Attorney appears to have a conflict of interest; (3)
9 Petitioner received ineffective assistance of counsel based on
10 inadequate investigation; (4) The state court judge refused to
11 allow Petitioner to file a habeas corpus petition in Superior
12 Court, stating that the Court of Appeal was the sole "locus" for
13 the habeas petition; and (5) The evidence in Petitioner's case is
14 incompetent. (See First Amended Petition at 5-6).¹

15 16 DISCUSSION

17 18 A. Dismissal is Warranted Based on Abstention

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20 "Younger abstention is a jurisprudential doctrine rooted in
21 overlapping principles of equity, comity and federalism." San
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23 ¹ Although the First Amended Petition still suffers from
24 some of the deficiencies set forth in the Court's March 18, 2016
25 Minute Order, the Court's determination that the First Amended
26 Petition should be dismissed based on the doctrine of abstention
and on Petitioner's failure to exhaust available state judicial
remedies renders it unnecessary to address those deficiencies.

1 Jose Silicon Valley Chamber of Commerce Political Action Comm. v.
2 City of San Jose, 546 F.3d 1087, 1091 (9th Cir. 2008); see also
3 Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S.
4 423, 431 (1982) ("*Younger v. Harris* . . . and its progeny espouse
5 a strong federal policy against federal-court interference with
6 pending state judicial proceedings absent extraordinary
7 circumstances."). Absent limited exceptions, abstention under
8 *Younger v. Harris*, 401 U.S. 37 (1971) is appropriate if four
9 criteria are met: (1) a state proceeding is ongoing; (2) the
10 proceeding implicates important state interests; (3) the federal
11 plaintiff is not barred from litigating federal constitutional
12 issues in the state proceeding; and (4) "the federal court action
13 would enjoin the proceeding or have the practical effect of doing
14 so, i.e., would interfere with the state proceeding in a way that
15 *Younger* disapproves." San Jose Silicon Valley Chamber of Commerce
16 Political Action Comm., supra, 546 F.3d at 1092; see also
17 *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1148-49 (9th Cir.
18 2007); *Gilbertson v. Albright*, 381 F.3d 965, 973 (9th Cir. 2004).

19 Here, abstention is required because all of *Younger's*
20 requisites are satisfied. First, Petitioner concedes that he is
21 still awaiting trial in case number FWV1600156. (See Petition at
22 2). Second, the criminal prosecution against Petitioner
23 implicates the State's important interest in protecting the
24 integrity of its criminal proceedings. See *Younger*, supra, 401
25 U.S. at 43-49. Third, Petitioner still has an opportunity to
26 raise federal constitutional claims in the state court criminal
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1 proceedings that are currently pending. Fourth, allowing this
2 action to proceed would unnecessarily interfere with the state
3 criminal proceedings.

4 Younger abstention applies to the claims in the Petition
5 unless Petitioner can demonstrate that "extraordinary
6 circumstances" warrant federal intervention. Younger, supra, 401
7 U.S. at 53. "Only in cases of proven harassment or prosecutions
8 undertaken by state officials in bad faith without hope of
9 obtaining a valid conviction and perhaps in other extraordinary
10 circumstances where irreparable injury can be shown is federal
11 injunctive relief against pending state prosecutions appropriate."
12 Perez v. Ledesma, 401 U.S. 82, 85 (1971); see also Carden v.
13 Montana, 626 F.3d 82, 83-84 (9th Cir. 1980). Petitioner has not
14 alleged that such circumstances exist. Thus, the Court shall
15 abstain from interfering with the state criminal proceedings.

16 **B. Alternatively, Dismissal is Warranted Based on the**
17 **Failure to Exhaust**

18 As a matter of comity, a federal court will not entertain a
19 habeas corpus petition unless the petitioner has exhausted the
20 available state judicial remedies on every ground presented in the
21 petition. 28 U.S.C. § 2254(b) - (c); Baldwin v. Reese, 541 U.S.
22 27, 29 (2004); Rose v. Lundy, 455 U.S. 509, 518-22 (1982). The
23 habeas statute explicitly provides that a habeas petition brought
24 by a person in state custody "shall not be granted unless it
25 appears that -- (A) the applicant has exhausted the remedies
26 available in the courts of the State; or (B)(i) there is an
27 absence of available State corrective process; or (ii)

1 circumstances exist that render such process ineffective to
2 protect the rights of the applicant." 28 U.S.C. § 2254(b)(1).
3 Moreover, if the exhaustion requirement is to be waived, it must
4 be waived expressly by the State, through counsel. 28 U.S.C. §
5 2254(b)(3).

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7 Exhaustion requires that the prisoner's contentions be fairly
8 presented to the state courts, and be disposed of on the merits by
9 the highest court of the state. See James v. Borg, 24 F.3d 20, 24
10 (9th Cir. 1994); Carothers v. Rhay, 594 F.2d 225, 228 (9th Cir.
11 1979). A claim has not been fairly presented unless the prisoner
12 has described in the state court proceedings both the operative
13 facts and the federal legal theory on which his claim is based.
14 Duncan v. Henry, 513 U.S. 364, 365-66 (1995); Picard v. Connor,
15 404 U.S. 270, 275-78 (1971); Johnson v. Zenon, 88 F.3d 828, 830
16 (9th Cir. 1996).

17 Here, Petitioner concedes that he has failed to present each
18 and every Ground alleged in the First Amended Petition to the
19 California Supreme Court. (See First Amended Petition at 2-3, 5-
20 6), The First Amended Petition is therefore unexhausted and
21 subject to dismissal on its face.²

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23 ² In certain circumstances, the Court has authority to stay
24 a "mixed" petition containing both exhausted and unexhausted
25 claims. See Rhines v. Weber, 544 U.S. 269 (2005); King v. Ryan,
26 564 F.3d 1133, 1143 (9th Cir. 2009)(stay procedure authorized by
27 Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003), overruled on other
28 grounds, Robbins v. Carey, 481 F.3d 1143 (9th Cir. 2007) ("Kelly"
remains available after Rhines). However, the present Petition is
not mixed; it is completely unexhausted. The Court cannot stay a
completely unexhausted petition. See Rasberry v. Garcia, 448 F.3d

1 Petitioner has failed to state an exhausted constitutional
2 claim for relief and therefore, the First Amended Petition fails
3 to state a claim upon which relief may be granted. If it "appears
4 from the application that the applicant or person detained is not
5 entitled" to habeas relief, a court may dismiss the action without
6 ordering service on the requested party. 28 U.S.C. § 2243; see
7 also Rule 4, Rules Governing Section 2254 cases in the United
8 States District Courts (petition may be summarily dismissed if
9 petitioner plainly not entitled to relief); Local Civil Rule 72-
10 3.2 (magistrate judge may submit proposed order for summary
11 dismissal to district judge "if it plainly appears from the face
12 of the petition []that the petitioner is not entitled to relief").

13 Petitioner may be able to present his claims to the
14 California Supreme Court. See In re Harris, 5 Cal.4th 813, 825
15 (1993) ("[H]abeas Corpus has become a proper remedy in this state
16 to collaterally attack a judgment of conviction which has been
17 obtained in violation of fundamental constitutional rights.")
18 (citations and quotations omitted).³

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22 1150, 1154 (9th Cir. 2006).

23 ³ The Court expresses no opinion concerning whether
24 consideration of a state habeas petition might be foreclosed by
25 state procedural law. The California Supreme Court should evaluate
26 this matter in the first instance. Moreover, even if there exists
27 an applicable state procedural bar, the California Supreme Court
28 nevertheless might choose to reach the merits of Petitioner's
claims. See e.g., Park v. California, 202 F.3d 1146 (9th Cir.
2000).

ORDER

For the foregoing reasons, the First Amended Petition is dismissed without prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: April 9, 2016.

S. James Otero

S. JAMES OTERO
UNITED STATES DISTRICT JUDGE